

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
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REGIONAL HEARING
CHECK

IN THE MATTER OF

**Praderas del Mar, Inc.
Aguada, Puerto Rico**

**Proceeding pursuant to §309(g) of the
Clean Water Act, 33 U.S.C. §1319(g)**

**Proceeding to Assess Class I
Civil Penalty Under Section 309(g)
of the Clean Water Act
Docket No. CWA-02-2009-3602**

**COMPLAINT
FINDINGS OF VIOLATION, NOTICE OF PROPOSED ASSESSMENT OF A CIVIL
PENALTY, AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

I. Statutory Authority

1. This Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing (“Complaint”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g) (2) (A) of the Clean Water Act (“Act”), 33 U.S.C. §1319(g) (2) (A). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Division of Environmental Planning and Protection (“DEPP”) of EPA, Region 2 (“Complainant”).
2. Pursuant to Section 309(g) (2) (A) of the Act, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (“CROP”), 40 CFR Part 22, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Praderas del Mar, Inc., (“Respondent”) for the discharge of pollutants into navigable waters, without authorization by the Secretary of the Army as required by Section 404 of the Act, 33 U.S.C. §1344, in violation of Section 301(a) of the Act, 33 U.S.C. §1311 (a).

II. Findings of Violation

1. During all times relevant to this Complaint, Praderas del Mar, Inc. was a corporation duly organized under the laws of the Commonwealth of Puerto Rico.
2. Praderas del Mar, Inc. is hereinafter the "Respondent."
3. Respondent is a "person" under Section 502 of the Act, 33 U.S.C. §1362.
4. During all times relevant to this Complaint, Respondent owned, operated and exercised control of construction activities at a parcel of land ("the Property"), located at PR-115, Km. 24.0 Interior, Asomante Ward, Aguada, Puerto Rico.
5. The Property contains both uplands (i.e., non-wetland area), and herbaceous and forested wetlands ("the Wetlands").
6. The Wetlands are adjacent to Tinaja Creek which flows into the Culebrinas River which flows into the Atlantic Ocean.
7. The Wetlands are waters of the United States which came under the jurisdiction of EPA and U.S. Army Corps of Engineers ("the Corps") effective September 1, 1976. The Act's jurisdiction encompasses "navigable waters" which are defined as "waters of the U.S." (33 U.S.C. §1362(7)).
8. On April 14, 2003, the Corps approved a jurisdictional determination ("JD") of waters of the United States for the Property which indicated that there were streams and wetlands on the Property.
9. On July 10, 2007, the Corps inspected the Property and discovered that mechanized earth-working activities had caused the discharge of earthen fill material into the Wetlands.
10. On or about 2007, Respondent discharged or caused to be discharged earthen fill material into the Wetlands at the Property.
11. The discharge of fill was part of the construction activities at the Property.
12. By letter dated June 12, 2008, the Corps issued a Notice of Violation to Respondent.
13. By letter dated June 30, 2008, the Corps transferred lead agency status for this case to EPA.
14. The earthen fill material described in Paragraph 9, above, constitutes a "pollutant" within the meaning of Section 502(6) of the Act, U.S.C. §1362(6).

15. Mechanized earth-moving equipment is a “point source” within the meaning of Section 502(14) of the Act, U.S.C. §1362(14).
16. The discharge of earthen fill material into waters of the United States constitutes a "discharge of pollutants" as defined by Section 502(12) of the Act, 33 U.S.C. §1362(12).
17. Section 301(a) of the Act, 33 U.S.C. §1311(a), prohibits the discharge of pollutants into waters of the United States except as in compliance with Sections 301, 306, 307, 318, 402 and 404 of the Act.
18. Section 404 of the Act, 33 U.S.C. §1344, authorizes the Secretary of the Army to authorize discharges of dredged and fill into navigable waters of the United States.
19. The discharge of pollutants, consisting of dredged and fill material, into navigable waters of the United States without authorization from the Secretary of the Army as provided by Section 404 of the Act, 33 U.S.C. §1344, from a point source, is unlawful under Section 301(a) of the Act, 33 U.S.C. §1311(a).
20. The Secretary of the Army has not issued authorization pursuant to Section 404 of the Act, 33 U.S.C. §1344, for the discharge described in Paragraph 9, above.

Count 1 - Unauthorized Discharge of Pollutants into Waters of the U.S.

21. Based on the above Findings, EPA finds Respondent to be in violation of Section 301 of the Act, 33 U.S.C. §1311, for the discharge of pollutants consisting of fill material into waters of the United States from a point source without authorization by the Secretary of the Army as provided by Section 404 of the Act, 33 U.S.C. §1344.
22. Each day that the subject discharge remains unauthorized by the Department of the Army pursuant to Section 404 of the Act, 33 U.S.C. §1344, constitutes an additional day of violation of Section 301 of the Act, 33 U.S.C. §1311.

Count 2 - Failure to Respond to Requests for Information

23. First Request for Information - On September 11, 2008, EPA issued a Request for Information letter (the “First Request”), pursuant to Section 308(a) of the CWA, 33 U.S.C. Section 1318(a), to Respondent, requiring that Respondent provide information regarding the unauthorized discharge of fill material described in Paragraph 9 above. A response was required within thirty days of Respondent’s receipt of the First Request.
24. The First Request was received by Respondent on September 20, 2008. To date Respondent has not replied to the First Request.

25. Second Request for Information - On February 18, 2009, EPA issued a second Request for Information letter (the "Second Request"), pursuant to Section 308(a) of the CWA, 33 U.S.C. Section 1318(a), to Respondent, requiring that Respondent provide information regarding the unauthorized discharge of fill material described in Paragraph 9, above. A response was required within thirty days of Respondent's receipt of the Second Request.
26. The Second Request was received by Respondent on February 25, 2009. To date Respondent has not replied to the Second Request.
27. Based on the Findings in paragraphs 23 through 26 above, EPA finds Respondent to be in violation of Section 308(a) of the Act, 33 U.S.C. §1318(a), for Respondent's failure to respond to the First Request and Second Request, both issued pursuant to Section 308(a) of the Act, 33 U.S.C. Section 1318(a).
28. Further, based on the above Findings, EPA finds Respondent to be liable for the administrative assessment of civil penalties in an amount not to exceed \$11,000.00 per day for each day during which the violations continue, up to a maximum of \$32,500.00, pursuant to Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A).
29. EPA has consulted with the Commonwealth of Puerto Rico regarding this proposed action by, at least, mailing a copy of this Complaint and Notice to the appropriate Commonwealth officials, and offering an opportunity for the Commonwealth to consult further with EPA on the proposed penalty assessment.
30. EPA has notified the public of this proposed action by, at least, publishing a Public Notice on the EPA Region 2 water website.

III. Notice of Proposed Order Assessing a Civil Penalty

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. §1319(g), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondent assessing a penalty of up to **\$32,500.00**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. §1319(g)(3). EPA has taken account of the nature, circumstances, extent and gravity of the violation, Respondent's prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent's ability to pay the proposed penalty. Based on the Findings set forth above, Respondent has been found to have violated the Act.

IV. Notice of Opportunity to Request a Hearing

1. Respondent may, within thirty (30) days of receipt of this Complaint and as part of any

Answer filed in this matter, request a Hearing on the proposed civil penalty assessment and at the Hearing may contest the factual allegations set forth in the Findings of Violation contained in Section II above, and the appropriateness of any penalty amount. The procedures for the Hearing, if one is requested, are set out in the CROP, including Subpart I thereof.

2. Be aware that should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. §1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

V. Filing an Answer

1. If Respondent wishes to avoid being found in default, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk no later than thirty (30) days from the date of receipt of this Complaint. EPA may make a motion pursuant to §22.17 of the CROP seeking a default order thirty (30) days after Respondent's receipt of the Complaint unless Respondent files an Answer within that time. If a default order is entered, the entire proposed penalty may be assessed without further proceedings.
2. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has knowledge or clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer also shall state:
 - (A) The circumstances or arguments which are alleged to constitute grounds of any defense;
 - (B) The facts which Respondent disputes;
 - (C) The basis for opposing the proposed relief;
 - (D) Whether a Hearing is requested.
3. Failure of Respondent to admit, deny, or explain any material factual allegations in this Complaint shall constitute admission of the allegation.

VI. Filing of Documents

1. The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007

2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to Eduardo J. Gonzalez, Esq., Assistant Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 16th Floor, New York, New York 10007.

VII. Instructions for Paying Penalty

1. As set forth in §22.18 of the CROP, Respondent may resolve these proceedings by payment of the proposed penalty in full, and by filing with the Regional Hearing Clerk, at the address provided below, a copy of the check or other instrument of payment. Pursuant to §22.45(c)(3) of the CROP, opportunity for such resolution of these proceedings is available to Respondent no sooner than 10 days after the close of the 30-day public comment period which commences upon publication of the Public Notice of this proposed action.
2. To pay the proposed penalty in full, Respondent shall send a cashier's check or certified check in the amount of \$32,500.00, payable to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document.

Such check shall be mailed to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727

SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045

Field Tag 4200 of the Fedwire message should read “ D 68010727 Environmental Protection Agency “

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

Respondent shall also send copies of such payment to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007

and to:

Eduardo J. Gonzalez, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007
212-637-3223

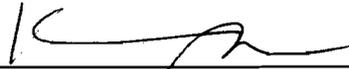
3. Upon receipt of payment in full, a Final Order shall be issued. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the Final Order.

VIII. General Provisions

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated thereunder, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act , 33 U.S.C. §1319(g), will affect Respondent's continuing obligation to

comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. §1319(a), for the violations alleged herein.

ISSUED THIS 30th DAY OF September, 2009.



Kevin Bricke, Acting Director
Division of Environmental Planning and Protection
U.S. EPA, Region 2
290 Broadway
New York, New York 10007

**Re: In the Matter of Praderas del Mar, Inc.
Proceeding to Assess a Class I Civil Administrative Penalty
Under Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g)
Docket No. CWA-02-2009-3602**

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

**Praderas del Mar, Inc.
Aguada, Puerto Rico**

Respondent.

Proceeding pursuant to Section 309(g) of
the Clean Water Act, 33 U.S.C. §1319(g)

**PROCEEDING TO ASSESS A CLASS I
CIVIL PENALTY**

**DOCKET NO.
CWA-02-2009-3602**

CERTIFICATE OF SERVICE

I certify that on October 2nd, 2009, I served the foregoing fully executed Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing, bearing the above referenced docket number, on the persons listed below, in the following manner:

Original and One Copy

By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

To Respondent:

Copy by Certified Mail

Return Receipt Requested:

Praderas del Mar, Inc.
P.O. Box 5000, Suite 627
Aguada, Puerto Rico 00602-5000

Copy by Next-Day Service

Federal Express:

Praderas del Mar, Inc.
Carr. 417, Km. 2.7, Barrio Mal Paso
Aguada, PR 00602

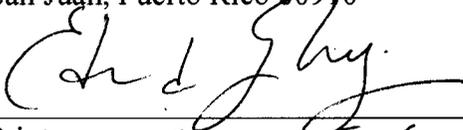
and

Copy by Certified Mail

Return Receipt Requested:

Environmental Quality Board
Commonwealth of Puerto Rico
Apartado 11488
San Juan, Puerto Rico 00910

Dated: Oct 2, 2009


Print name: Eduardo J. Gonzalez
New York, New York